IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 544 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULTANHUSSAIN AKBARALI AGHARIYA & 8 - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR KB ANANDJIWALA for Applicant(s) : 1 - 9.
MS MEETA PANCHAL APP for Respondent(s) : 1,
MR HIMANSU M PADHYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 29/08/2007

ORAL JUDGMENT :

1. The petitioners have filed this revision application u/s 397 read with Section 401 of

the Code of Criminal Procedure, 1973 and challenged order dated 13-7-2005 passed by learned Presiding Officer, 3rd Fast Track Court, at Palanpur below application Exh. 14 in Sessions Case No. 57 of 2004.

2. According to prosecution, complainant Gulamali Vazirbhai and trustee Sharafathussain Kurbanhussain, Vice President Mohammadbhai Dosanbhai Sahu, Executive Committee Member Gulamali Mohmmadbhai Malpara and Mohmmadhussain Hugasiya etc. had assembled at Siya Isha Ashari Momin Jamat Iamamwada at 9-00 p.m. on 11-2-2002 in respect of dispute of land purchased earlier by Jamat. Mariyamben a partner of seller had filed a suit and obtained injunction and therefore to resolve that dispute the President and members of earlier Committee and other nine representatives were invited at Imamwada. Therefore, the petitioners came to Imamwada and were discussing the dispute. At that time petitioner No. 1 Sultanbhai Akbarali, petitioner No. 2 Mohammad Taki, petitioner No. 3 Hussainbhai stood up and started giving abuses to deceased Sharafathussain Kurbanhussain. Therefore the complainant and others asked them to keep

silence, but they got enraged and assaulted Sharafatrhussain by giving fist and kick blows and petitioners No.4 to 9 rushed towards Sharafathussain saying “kill him” with a view to assault him. The petitioners No.1 to 3 namely Sultanhussain, Mohmmad Taki Akbarali Aghariya and Hasanali Gulamali Sunsara mounted on Sharafathussain. Therefore, complainant and others tried to rescue him but saw that Sharafathussain had died.

3. On the basis of complaint lodged by Gulamali offence was registered as I CR No. 8 of 2004 before Palanpur Taluka Police Station for the offences punishable u/ss 302, 143, 323, 504 and 149 of the I.P. Code and investigation was started. On completion of investigation charge sheet was laid before learned J.M.F.C., Palanpur for the aforesaid offences against the petitioners. As the offences were exclusively triable by Sessions Court, the case was committed to Sessions Court, Banaskantha at Palanpur and it was registered as Sessions Case No. 57 of 2004. The petitioners gave application Exh. 14 u/s 227 of the Code of Criminal Procedure, 1973, inter-alia, contending that the

petitioners have not committed the offences and false charge sheet is filed against them; that the petitioners were called at the meeting to resolve the dispute pertaining to land and alleged incident occurred during the discussion; that there was no intention on the part of the petitioners to commit offence; that there is no evidence to indicate that injuries were caused with a knowledge that such injuries were likely to cause death;. It is further contended that postmortem report does not indicate any external injury and the cause of death is cardio-respiratory failure due to acute myocardial infarction; that the deceased died due to natural death and therefore no offence punishable u/s 302 of the I.P. Code is made out and therefore the petitioners are required to be discharged for the offences punishable u/s 302, 143 and 149 of the I.P.C.

4. After hearing learned counsels for the parties, learned Presiding Officer, 3rd Fast Track Court, Banaskantha at Palanpur, dismissed the application. Being aggrieved by said order the petitioners have preferred this Criminal Revision Application.

5. I have heard learned advocate Shri K.B. Anandjiwala for the petitioners, learned advocate Mr. Y.S. Lakhani for learned advocate Mr. Himanshu M. Padhya for the original complainant and learned A.P.P. Ms. Meeta Panchal for respondent - State at length and in great detail.

6. It is settled proposition that in exercising powers under Section 227 of the Criminal Procedure Code, the Judge has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima faice case against the accused has been made out. When materials placed before the Court disclosed grave suspicion against the accused which has not been properly explained, the Court will be justified in framing a charge. It is also settled proposition that at that stage the Court is not required to see whether there is sufficient ground for conviction or that trial is sure to end in conviction. The Court is not required to meticulously judge the truth, veracity and effect of the evidence which the prosecution proposes to adduce. It is not obligatory for the Judge at that stage of trial to consider in any detail and weigh

in a sensitive balance whether the facts if proved would be incompatible with the innocence of the accused or not. The standard of test which is to be finally applied before recording of guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. Therefore, at the stage of framing of charge if the Court thinks that there is ground for presuming that the accused has committed the offence, the Court is required to frame charge. The Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charge against the accused in respect of the commission of the offence alleged to have been committed by them. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused or not. Sometimes, even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that there is ground for presuming that accused has committed the offence. Keeping in mind all these propositions, now I will consider the

submissions made by the learned counsels for the parties in light of the evidence sought to be adduced by prosecution.

7. Learned advocate Mr. Anandjiwala for the petitioners submitted that there is no nexus between the assault and death and there are no external or internal injuries on the dead body. Therefore, charge for the offence punishable u/s 302 of the I.P. Code could not be framed and at the most charge for the offence punishable u/s 323 of the I.P. Code could be framed. As against this, leaned advocate Mr. Lakhani for the original complainant submitted that cause of death is on account of cardio respiratory failure on account of sudden assault and even if there is no external or internal marks of injuries, the deceased suffered heart attack on account of sudden attack and therefore the learned trial Judge was justified in rejecting the application for discharge and no interference is warranted in the impugned order.

8. Leaned advocate for the petitioners supplied copy of postmortem report of the deceased. Column No.17 of the report

indicates that there was no external injury marks on the dead body. Column No. 20 of the report indicates that cause of death is cardio-respiratory failure due to acute myocardial infarction. It also appears that a questionnaire was sent to the doctor who performed postmortem to find out whether death was possible on account of alleged incident. In reply to the questionnaire the doctor has opined that there is possibility of heart attack if any one having heart ailment received sudden mental shock on account of unexpected assault. The statement of the witnesses recorded during investigation indicate that deceased was assaulted by petitioners No.1 to 3 who mounted upon him and gave kicks and fists blows and other petitioners rushed towards deceased giving abuses. Therefore, prima facie it appears that the deceased sustained heart attack on account of shock as a result of sudden assault. The statement of the witnesses also indicate that deceased Sharafathussain was suffering from heart ailment and the petitioners knew about the ailment of the deceased. In view of this evidence, prima facie it appears that on account of sudden assault deceased Sharafathussain suffered

heart attack and died. Therefore, at this stage submission of learned advocate Mr. Anandjiwala for the petitioners that there is no nexus between the injury and death, cannot be accepted.

9. Learned advocate Mr. Anandjiwala submitted that there is no evidence to indicate that the petitioners had intention to commit the offence as they had come to attend the meeting at the invitation of other office bearers of Jamat without weapons. He also submitted that there is no material to indicate that there was knowledge that the injuries would result into death and none of the ingredients of Section 300 of the I.P. Code are attracted. He also submitted that there was no unlawful assembly with unlawful object to commit murder of Sharafathussain and therefore charge under Section 149 of I. P. Code could not be framed.

10. Learned advocate Mr. Lakhani for the original complainant submitted that case of the petitioners would come under explanation 1 of Section 299 of the I.P. Code and as the deceased was labouring under a disorder the

act of the petitioners accelerated his death. He also submitted that lawful assembly may turn into unlawful assembly and it can be decided at the trial and therefore the ingredients of Section 149 and of the I.P. Code, prima facie exist and charge could be framed for such offences.

11. Looking to the evidence, it appears that there was discussion in respect of the disputed land in the meeting and during that discussion petitioners No. 1, 2 and 3 physically assaulted the deceased and other petitioners rushed towards him with a view to attack. This prima facie indicates that on account of discussion the petitioners got enraged and assaulted the deceased. The manner in which the incident occurred, it can be inferred that on account of assault Sharafathussain sustained heart attack. At this stage any observation with regard to intention and knowledge would prejudice the case on either side and during the trial if Judge comes to a different conclusion it may not be possible for him to pass appropriate orders. Therefore, looking to the evidence, at this stage, in my view, the learned trial Judge was justified in coming

to the conclusion that the petitioners were involved in the offence punishable u/s 302 of the I.P. Code.

12. Learned advocate for the petitioners relied upon decision in **Harit Ishwarbhai Andhariya & Anr. Vs. State of Gujarat,** reported in **2000 (1) G.L.H. 496.** In the said decision, deceased had consumed liquor and during hot exchanges, some force was applied as a result of that deceased fell down and sustained head injury and died on account of injury. This Court, after considering the evidence, observed that to sustain grievous injury is something different than to inflict grievous injury and in the facts of that case held that knowledge could not be attributed to the accused so far as their intention to cause grievous injury is concerned. The court also observed that one should legitimately try to see that persons having consumed liquor behave in proper manner at least in vicinity of his residence or business premises and it is the duty of a responsible citizen to remove such type of nuisance by using proper wisdom and if required by using reasonable force. In the present case as observed earlier the deceased was suffering from

heart ailment and the petitioners were aware about the ailment. The petitioners, deceased Sharafathussain and others office bearers of Jamat had assembled to resolve dispute. Thereafter, on account of sudden assault the deceased suffered heart attack and died. The medical evidence also prima-facie indicates that heart attack could be caused by mental shock on account of sudden assault. In view of this, the facts of present case are different and therefore the said decision cannot be made applicable to the present case.

13. Learned advocate Mr. Anandjiwala for the petitioners relied on unreported decision of **Rajuji Mangaji Thakore V. State of Gujarat (in Criminal Misc. Application No. 6084 of 1999, decided on 5-11-1999 (Coram : C.K. Buch, J.)**, wherein this Court after considering the medical evidence held that **the offence punishable u/s 302 of the I.P. Code has not been made out**. In the present case, cause of death indicated in postmortem report and opinion of the Doctor, given in reply to questionnaire, who performed postmortem, prima facie indicates that deceased died by

heart attack which could be on account of mental shock sustained by sudden assault. Therefore, this decision cannot be made applicable in the facts of the present case.

14. As regards the submission that the offence punishable u/s 149 of the I.P. Code has not been made out. It is not in dispute that the petitioners were present at the place of incident and the incident occurred during the discussion. It appears that the assembly which was not unlawful when it assembled turned into unlawful assembly as on account of discussion in the meeting, petitioners got enraged and despite requests by complainant and others to keep peace, petitioners No. 1,2 and 3 mounted upon the deceased and gave kick and fist blows and other petitioners rushed towards the deceased to assault him. Considering the facts and circumstances of the case, prima-facie at this stage, it can be inferred that the petitioners formed unlawful assembly and shared common object to assault the deceased.

15. It also appears that panchanama of scene of offence was drawn and carpet with alleged

urine stains was recovered. Column No. 21 of the postmortem report indicates that bladder was empty. According to the statement of the witnesses the deceased passed urine at the time of his death. Considering this evidence, at this juncture, it would be difficult to accept that the petitioners are not responsible for death of Sharafathussain. Only after full fledged trial the prosecution would be able to establish the offence alleged against the petitioners. Therefore, in my view, the learned trial Judge did not commit any error in passing the impugned order. Therefore, the impugned order of the trial court is neither erroneous nor perverse and hence it does not call for any interference.

16. In view of above, the present revision application fails and is dismissed. Rule stands discharged. Interim relief granted earlier stands vacated.

17. Learned advocate for the petitioners seeks extension of interim relief granted earlier by this Court for a further period of 8 weeks to enable the petitioners to approach higher forum. In the facts and circumstances of the

case, request made by the learned advocate for the petitioners is acceded to and interim relief granted earlier is extended for a further period of 8 weeks from today.

(Bankim N. Mehta, J.)

/JVSatwara/